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January 6, 2021

**BY ECF**

The Honorable Judge Richard J. Sullivan  
United States Circuit Court Judge  
Second Circuit Court of Appeals  
40 Foley Square  
New York, NY 10007

**RE: United States v. Marco Batista  
11 Cr. 346 (RJS)**

Honorable Judge Sullivan:

I write to respectfully request an update on the status of the above-captioned case and to request that the Court direct the Bureau of Prisons to provide defense counsel with information concerning Marco Batista's health status and conditions of confinement at the Metropolitan Detention Center. On December 18, 2020, Marco Batista, who is 54 years old, tested positive for Covid-19 while incarcerated at the Metropolitan Detention Center. *See* Bureau of Prisons Medical Records, Exhibit A. Since then, he has remained on Unit 73, the isolation unit. His family has not heard from him in over a month.

On December 5, 2019, Mr. Batista appeared before Your Honor for resentencing under *United States v. Davis*, 139 S. Ct. 2319 (June 24, 2019) and *United States v. Barrett*, 937 F.3d 126 (2d. Cir. 2019). The parties agreed that Mr. Batista is entitled to be resentenced pursuant to *Davis*. The Court ordered the parties to submit briefing by January 6, 2020 on why kidnapping in violation of 18 U.S.C. § 1201(a)(1) is not a crime of violence under *Davis*. The defense timely filed a memorandum of law in support of Mr. Batista's 28 U.S.C. § 2255 motion for resentencing under *Davis*. Dkt. No. 76. The Government did not contest the defense filing.

It has now been a year since the defense's filing and more than a year since Mr. Batista last appeared before Your Honor. In that time, Mr. Batista has languished at the Metropolitan Detention Center. On December 28, 2020, I spoke with Mr. Batista and learned that he had been diagnosed with Covid-19 and had been in the isolation unit since December 22, 2020. Mr. Batista was coughing throughout our conversation and reported that he frequently felt feverish at night and was experiencing pain throughout his body. Despite this, he was never given any medication, not even Tylenol, to alleviate his coronavirus symptoms. He is allowed out of his cell—which he

shares with another individual infected with Covid-19—for fifteen minutes on Mondays, Wednesdays, and Fridays. This is the only time he has to shower or use the phone or computer. Upon entering the isolation unit, Mr. Batista was not furnished with a new face mask; he still has the same mask he was given several months ago. Further, while Mr. Batista was provided a small bottle of cleaning solution to clean his cell, he was not given anything to apply the solution, such as a spray bottle or rag, making it impossible to maintain a sanitary environment.

Since learning of Mr. Batista's diagnosis, the defense has repeatedly sought information from the Bureau of Prisons concerning his medical condition and requested that he receive medical attention and be provided with the necessary personal protective equipment, including a new clean face mask and a rag/spray bottle to apply cleaning solution in his cell. Despite counsel's repeated requests, the Bureau of Prisons has yet to answer even basic questions about Mr. Batista's conditions of confinement, including whether he has a clean face mask or a washcloth to clean his cell. While the Bureau of Prisons provided Mr. Batista's medical records to the defense through the Government, these records do not include answers to these questions.

Accordingly, Mr. Batista requires the Court's intervention to ensure his medical needs are met. Specifically, Mr. Batista requests that the Court direct the Bureau of Prisons to answer the defense's questions concerning his conditions of confinement and provide the defense immediate access to Mr. Batista's medical records upon request. In addition, Mr. Batista respectfully requests an update on the status of his case and the pending memorandum of law filed by defense counsel on January 6, 2020.

Thank you for your consideration of this matter.

Respectfully submitted,


/s/ Marne Lenox  
Marne Lenox  
Assistant Federal Defender  
(212) 417-8721

cc: Ni Qian, Assistant U.S. Attorney

IT IS HEREBY ORDERED THAT, no later than Friday, January 15, 2021, the government shall respond to Defendant's request that the Court direct the Bureau of Prisons to answer the defense's questions regarding his conditions of confinement, and to provide the defense immediate access to Defendant's medical records.

SO ORDERED.

Dated: January 12, 2021  
New York, New York

  
RICHARD J. SULLIVAN  
UNITED STATES CIRCUIT JUDGE  
Sitting by Designation

# EXHIBIT A

**REDACTED**